

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 6350 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and

MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RAJASTHAN STATE ROAD TRANSPORTCORP.

Versus

YUSUF ISMAIL SUBAN

Appearance:

MR NS SHETH for Petitioners
MR MUKESH R SHAH for Respondent No. 1

CORAM : MR.JUSTICE N.J.PANDYA and

MR.JUSTICE A.R.DAVE

Date of decision: 15/07/96

ORAL JUDGEMENT : [Per : Pandya, J]

Admit. With the consent of both the sides, matter is taken up for final hearing today. In fact, on previous occasion when the matter was called out, the possibility of the matter being disposed of was indicated and, therefore, record & proceedings from MAC Tribunal,

Baroda were called for. The matter, therefore, has been heard at length and where-ever necessary, record and proceedings have been referred to in original.

Three-fold contentions have been raised on behalf of the appellants. First is that there being head-on collision, 100% negligence of appellant no.2 i.e. bus driver of Rajasthan State Road Transport Corporation could not have been held.

The trial court had before it the deposition of the claimant-respondent who was bus driver of Gujarat State Road Transport Corporation and the deposition of appellant - Opponent no. 2, the other bus driver. By way of documentary evidence namely parties were relying on panchanama of scene of incident exh.35.

The learned Advocate Shri Sheth appearing for the appellant, opened his arguments with reference to panchanama Exh. 35 by saying that it is not the panchanama of the scene of offence, but it records the position of two vehicles as noted by the panchas after the incident.

On going through the panchanama, we also found that the aforesaid argument of Shri Sheth is plausible because the panchanama does not locate in so many words that it is the place of incident.

However, in the judgment, the learned Tribunal Judge of MAC Tribunal (Main) Baroda has extracted the relevant portion of the panchanama in original and there it has been specifically indicated and verified by us from the original panchanama exh.35 that the scene of the incident as shown in the panchanama, to be the southern side of the road.

The bus driven by the claimant was proceeding from East to West towards Baroda and bus of the appellants driven by appellant no.2 was proceeding in the opposite direction towards Godhara. The corresponding correct side of both the sides, therefore, would be south and north. In this background, if incident as per the panchanama had happened on the southern side, it would necessarily mean that Rajasthan bus had crossed over to otherside of the road. It would mean that bus of the appellants had gone over wrong side.

In view of aforesaid plausible ambiguity in the panchanama making it arguable that it does not disclose the scene of incident, we have to refer to the oral

testimony of the respective drivers.

Oral testimony of the claimant clearly indicates that the Gujarat bus had left the bus stand of village Asoj and soon thereafter incident happened. As per the claimant, his bus was moving in the 2nd gear. It would necessarily mean that the bus coming from east, its correct side being the south for halting at the bus stop, it had to remain in the southern half of the road and having left the stand while it has just picked up the motion, it would be still on the southern side of the road.

It is an admitted position that it being early morning of winter season in the month of November, there was fog. Bus driver of both the buses claimed that they have kept their lights on. Bus coming from Baroda side i.e. bus of the appellant was proceeding towards Godhara and it is nobody's case that it was about to halt. It can, therefore, safely be inferred that it was in fairly good motion. This is not to say that on highway that if bus is moving in a speed, that by itself would be an act of negligence.

However, when two buses are involved in the incident and one of them has just left the bus stop and other one coming from the opposite direction is in motion and if incident had happened in the manner stated above, it would mean that the Rajasthan bus had crossed over to the other side.

Apart from Rajasthan bus being in motion, it is an admitted position that it had in it 125 passengers while its carrying capacity was about 52 to 62 passengers. Rajasthan bus driver is not specific about its carrying capacity.

Gujarat bus has been pushed over to a distance of about 22 feet or so and Rajasthan bus had gone over about 5 feet away as it had applied brakes. Impact was, therefore, great.

The result of the impact on the Gujarat bus was so tremendous that including its machine part, everything was damaged in front. So far as Rajasthan bus is concerned, its front right side was involved going back up to the 5th row of the seat.

Application of brakes of Rajasthan bus as indicated in the panchanama and brake marks up to 5 feet, would show that while impact occurred, brakes were

applied and Gujarat bus was pushed back as a result thereof.

Under the circumstances, the possibility which emerges is that as submitted by learned Advocate Shri Sheth and also deposed to by appellant no.2, his bus was brought to halt on the left side of the road after applying brakes and that would accordingly explain the brake marks.

If situation has discussed above is taken into consideration, there is also a greater possibility of impact having occurred on the southern side of the road and both the buses have dashed coming from opposite directions and because of the impact on Gujarat bus, involving damages to the bus and serious injury to the driver of the bus, except for allowing the bus to go back and coming to a halt on its own, the claimant bus driver could do nothing. Bus had come to a rest after leaving road and coming to halt by the side of edge of the road side built. It was lying in the crosswise direction. Looking to the impact on the Rajasthan bus, the bus driver i.e. appellant no.2 was able to operate his bus by applying brake and it being brought to halt by the side of the road.

Impact on Gujarat bus caused crush injury on the right leg involving tibia and fibula bones and eventually resulting into amputation of right leg just above the knee joint. When learned Trial Judge has aforesaid evidences with him and has an advantage to see witnesses deposing before him, in our opinion, the conclusion arrived at by the Tribunal cannot be said to be unwarranted from the evidence and, therefore, we will not interfere with his findings. In our opinion, therefore, the submission as to the negligence on the part of the bus driver has rightly not been accepted by the Tribunal and we do the likewise.

The second contention was about the quantum. Salary of the claimant at the time of incident was about Rs. 1001/ p.m. Evidence was recorded in the year 1995. As per the deposition of Shri Parmar, Administrative Officer in Godhara Division of Gujarat State Road Transport Corporation, the claimant would have drawn about Rs. 4000/ p.m. His retirement age being 58 years, looking to the birth date of the claimant, that event would have taken place in the year 2008. This had prompted the learned Trial Judge to find out the mean on the basis of salary that the petitioner was drawing at the time of incident and would have drawn, at the time of

recording of evidence. Bearing in mind the total length of service from the date of incident which was about 22 years, the learned Trial Judge has adopted multiplier of 15.

This cannot be faulted with. As a result, datum figure comes to Rs. 2500/-. That being the position, we would not like to interfere with the amount awarded by the trial court.

The third submission on merits made by LA Shri Sheth was that amputation cannot be said to be the result of incident because there was untreated fracture deposed to by Dr. Bhatt exh.41. However, on close scrutiny of deposition of Dr. Bhatt, untreated fracture is that of right radius ulna i.e. fracture of right lower arm. Amputation of leg was the direct result of unhealed comminuted fracture of right tibia fibula. There is evidence on record that for the entire period from the date of incident till amputation, the claimant was hospitalised initially for one month in SSG Hospital, Baroda and thereafter he was treated by Dr.. Bhatt.

On all the submissions made on behalf of the appellants, we find that looking to the record, they cannot be accepted.

The net result, therefore, is that the appeal fails and it is hereby rejected with no order as to costs. The appellants are directed to deposit the amount within 8 weeks from today. On amount being deposited, should be dealt with by the Tribunal in accordance with the order of the Tribunal. Sum of Rs. 25,000/ lying with the Registry of this Court, is ordered to be transferred to the Trial Court.

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